

Attorney Docket No.: J6816(C)
Serial No.: 10/697,608
Filed: October 30, 2003
Confirmation No.: 9632

REMARKS

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Claim 1 has been augmented with the elements of claims 3-5. The C₁₀-C₂₂ unesterified fatty acid is identified as stearic acid. Support is found in the Examples; see page 15, paragraph [00049]. New claims 10-12 have support in the specification at page 6, paragraph [00017]. Claim 13 specifies the polyethoxy or polypropoxy alcohol ester of a fatty acid as being PEG-100 stearate. Support is found at page 6 (line 1) and Example 1 at page 15, paragraph [00049]. Claim 14 has support at page 6 (line 18). Claim 15 has support in Table II at page 16.

Claims 1-4 and 6-9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Muller et al. (U.S. Patent 6,248,338) in view of Franklin et al. (U.S. Patent Application 2001/0055574 A1). Applicant traverses this rejection.

Moisturization of skin is vastly improved by incorporation of glycerin at relatively high concentration levels, particularly 10% or higher. Unfortunately, these high levels of glycerin disadvantageously impart negative skinfeel aesthetics to applied areas of the skin. High glycerin formulas also present a challenge for thickening and emulsifying the formulation.

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Applicant has achieved compositions with significant glycerin content through formulation with a modified starch in combination with a specified crystalline gel structurant. The structurant comprises a surfactant and co-surfactant. The surfactant is a polyethoxy or polypropoxy alcohol ester of a fatty acid. The co-surfactant is a mixture of three materials. These are a C₁₀-C₂₂ fatty alcohol, a glyceryl ester of C₁₀-C₂₂ fatty acid, and stearic acid.

Unlike the present invention, Muller et al. does not teach a crystalline gel structurant system comprising a surfactant and a co-surfactant. More particularly, there is no disclosure of a polyethoxy or polypropoxy alcohol ester of a fatty acid. Exemplative of the surfactant in the present invention is PEG-100 stearate. Neither this specific material nor anything similar is present in the reference. Applicant's invention further requires a co-surfactant which is a mixture of three materials. Although each of the mixture of three materials is mentioned in the long table bridging columns 9-10, none of the 49 examples combines all of these materials. Thus, Muller does not present a *prima facie* case of obviousness.

Franklin et al. was introduced as describing a gel structurant system. Yet this reference also does not disclose the claimed surfactant which is a polyethoxy or polypropoxy alcohol ester of a fatty acid. Further, the stearic acid of the co-surfactant is not mentioned in this reference. Consequently, Franklin et al. does not remedy the basic deficiency of Muller et al. The combination of references simply does not present a *prima facie* case of obviousness.

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Claim 5 was rejected under 35 U.S.C. § 103(a) as unpatentable over Muller et al. (U.S. Patent 6,248,338) in view of Franklin et al. (U.S. Patent Application 2001/0055574 A1), and in further view of Moghe et al. (U.S. Patent Application 2003/0206931). Applicant traverses this rejection.

Moghe et al. was cited for teaching the co-surfactant system. Attention was drawn to claims 21 and 22 of the reference. These describe a mixture of “branched chain fatty acid surfactant, a straight-chain fatty alcohol surfactant... and a polyhydric alcohol”.

Unlike the claimed co-surfactant, Moghe et al. does not disclose stearic acid. Applicant’s stearic acid is not a branched chain fatty acid. The term “branched chain fatty acid surfactant” is not defined by the reference. No free fatty acid is disclosed by Moghe et al. Indeed, the appendage of the word “surfactant” leaves those skilled in the art to believe that a free fatty acid per se is not the structure intended. Rather it appears that some derivative of a branched free fatty acid is the appropriate structural definition. Most certainly, there is neither disclosure nor exemplification of any co-surfactant mixture of fatty alcohol, glyceryl ester of fatty acid, and stearic acid. For all the foregoing reasons, a combination of Muller et al., in view of Franklin et al. and Moghe et al. would not present a *prima facie* case of obviousness.

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In view of the foregoing amendment and comments, applicant requests the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,

A handwritten signature in cursive script, reading "Milton L. Honig", written in black ink.

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